IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.5408 of 2005
Date of Decision : November 28, 2006.

Thakur Sawara Mandir Kot Satokh Rai ..... Petitioner

Vs.

Gandarv Dass ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.Kuldip Sanwal, Advocate
for the petitioner.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed challenging order dated 26.2.2005 passed by Civil Judge (Junior Division), Gurdaspur vide which the learned Judge has allowed an application under Order 9 Rule 13 and set aside the ex parte decree dated 3.9.2002. It was the allegation of the respondent that one Bachan Dass who is working as Extra Departmental Delivery Agent with Postal Department was very close to Satish Kumar Puri through whom the plaintiff had filed the suit and therefore report of service dated 29/30.5.2002 is manipulated.

The learned trial court framed issues and recorded evidence before deciding the application. It has come on the record that the respondent-applicant was to be served for 12.6.2002 and for that purpose summons were issued through ordinary process as well as through registered cover. A report came on the registered cover that an effort was made to serve the respondent on 29.5.2002 but he was not available on the address on that day and thereafter the postman met him on the G.T.Road

where he refused to accept the summons. It was this report which was considered a valid report and ex parte proceedings were ordered against the applicant. In the ordinary process which was sent the Process Server had reported that the respondent-applicant was not available at his address as he was away to Batala. It is on the face of these contradictory reports that a finding was recorded that it was believable that no proper service had been effected on the respondent-applicant. It is therefore that the ex parte decree has been set aside.

It has further been noted that the respondent-applicant became aware of the ex parte judgment only on 14.12.2002 when the decree holder along with other persons came to take possession of the property in dispute and it is only then that an application was moved immediately thereafter on 16.12.2002. Hence the trial court also rejected the argument of the petitioner that it was barred by limitation.

I find no error in the view taken by the trial court warranting interference by way of the present revision petition. I therefore find no merit in this revision petition and the same is accordingly dismissed.

November 28, 2006 (P.S.Patwalia)
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